

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

JACQUELYN M. QUINT,)	
)	
Plaintiff)	
)	
v.)	Civil No. 96-71-B
)	
A. E. STALEY MFG. CO.,)	
)	
Defendant)	

MEMORANDUM OF DECISION¹

The plaintiff, Jacquelyn M. Quint, brought this civil rights action against the defendant, A. E. Staley Manufacturing Company (hereinafter referred to as "Staley" or "the company"), following her termination from the company's employ. Quint's ten-count complaint alleges, *inter alia*, job status discrimination based on sex, hostile work environment sexual harassment, retaliatory termination, job status discrimination based on a disability and the failure to provide reasonable accommodations, negligence, intentional and negligent inflictions of emotional distress, and defamation. The action was brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000h-6 (1994) (Title VII), the Maine Human Rights Act, 5 M.R.S.A. §§ 4551 - 4633 (1989 & Pamph. 1996) (MHRA), the Americans with Disabilities Act, 42 U.S.C. §§ 12101 - 12213 (1995 & Supp. 1997) (ADA), and state tort law. For the reasons set forth below, the Court grants the defendant's motion for summary judgments in part and denies it in part.

¹ Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

I. Summary Judgment

A summary judgment is appropriate only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is genuine, for these purposes, if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “A material fact is one which has the ‘potential to affect the outcome of the suit under applicable law.’” *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

II. Background

Considering the procedural posture of the case, the Court recites the facts in a light most favorable to the plaintiff, Jacquelyn Quint. Quint was employed at Staley's starch processing facility in Houlton from December 2, 1991, until her termination from employment by a letter from the company on March 8, 1994. At the time of her dismissal, Quint recently had been placed on a temporary leave from work as a process operator by a hand specialist, Dr. Labelle, due to problems associated with Quint's diagnosed carpal tunnel syndrome. Quint received notice of her termination after she canceled an appointment made by her employer with a company medical doctor, Dr. Blum, and after she failed to attend a follow-up meeting with company management regarding her medical condition. In the letter it sent to Quint, Staley wrote that it was terminating her employment because she:

knowingly failed to conform to reasonable directions to submit to a determination for fitness for work. You provided the company with no reason for this failure and, in fact, notified the physician and not the company of your cancellation of the appointment made for you. You have made no subsequent attempts to contact the company and have not responded to our attempts to contact you.

Quint contends that the short notice given her by the company of the medical appointment was unreasonable, and that her termination, officially due to her failure to attend the scheduled appointments, actually was the result of the company's discrimination against her due to her physical impairment. Quint explains her decision to cancel the appointments by stating that in view of the short notice given her by the company of the appointments, she was unable to have a doctor of her own choosing accompany her to the medical appointment, and she therefore canceled the appointment with Dr. Blum. She claims that she did not notify her employer that she canceled the medical appointment because Dr. Blum's office told her that they would notify Staley. Quint also explains that she did not attend the follow-up appointment with company management because she believed the meeting would be unhelpful since it had been arranged to discuss the medical report that was to have been issued as a result of the prior day's scheduled medical appointment. Quint maintains that the company's failure to give her reasonable notice of or to reschedule the appointments were denials of her requests for reasonable accommodations of her disability. Quint also avers that Staley has a history of discrimination against female employees, that it discriminated against her due to her gender, and that it retaliated against her by firing her due to her complaints with state and federal officials regarding sex and disability harassment at the company.

Staley maintains that it first was informed on May 21, 1993, by Quint that she had been diagnosed with carpal tunnel syndrome. On that date, Quint's personal physician, Dr. Abouleish, notified Staley by letter that Quint had bilateral carpal tunnel syndrome and that she should not be

required to move or lift anything at work weighing more than five to ten pounds. Quint maintains that although Staley was notified of such a diagnosis, it did not make any workplace accommodations for her until July of 1993. She further avers that the company failed to implement subsequent recommendations made by its own ergonomist and failed to provide the plaintiff with a permanent, light-duty job as she had requested. Although it maintains that it never regarded her as disabled, Staley did give Quint lighter work assignments and it arranged for her to be seen by a specialist, Dr. Sigsbee, following Quint's initial claim that her wrists were hurting her. Sigsbee examined Quint on July 26, 1993, and again on October 11, 1993. At the first visit, Sigsbee concluded that Quint had carpal tunnel syndrome and should modify her work activities accordingly. At the second visit, Sigsbee determined that Quint's condition had "substantially improved," but he recommended that Quint continue to avoid certain work activities. Staley subsequently hired a vocational and job development expert, as well as an ergonomic expert, to meet with Quint and company management to assess her work restrictions and to explore necessary adjustments at the plant.

Sometime in December of 1993, Dr. Abouleish contacted Staley and reported that Quint's carpal tunnel syndrome had essentially resolved following her wearing wrist splints, modifying her job activities, and generally reducing repetitive motions in her daily activities. On January 6, 1994, however, the company received a letter from a Dr. David Starbuck stating that due to her physical impairment, Quint now was unable to work completely. This conclusion was contradicted by the company doctor's opinion that Quint was able to work her modified job duties. Staley told Quint that she was expected to report back to work to resume her duties. Quint complied with the request but, in February 1994, she reported increased difficulties with her wrists. After Quint's request for

excused time off from work was denied by Staley, she visited Dr. Labelle in South Portland on a work day. Labelle recommended that Quint remain out of work for six weeks. On February 28, 1994, Quint provided the company with a copy of a report from Dr. Labelle. She also notified her supervisor of the report by phone on March 1, 1994. Dr. Labelle testified at his subsequent deposition that on a scale of one to ten, Quint's current physical impairment rates a two, and never rated worse than a six. After learning of and disputing Labelle's recommendation that Quint take time off from work, Staley arranged for another appointment for Quint with Dr. Blum. It notified Quint by letter on March 5, 1994, of the appointment scheduled for the following Monday, March 7. As recited above, Quint canceled this appointment due to the short notice. Dr. Sigsbee examined Quint again in connection with this suit on November 18, 1996. At that time, he determined that Quint suffers very mild carpal tunnel syndrome, and concluded that she is not impaired as to the average person's ability to work, to lift, and to perform repetitive manual tasks. Sigsbee also stated that in his opinion this had been Quint's condition for approximately the past year and one half.

In May 1993, Quint formally reported to company management that she was being harassed by a supervising co-worker. She maintains in the current matter that since she began working at the Houlton plant in 1991, she often was subjected to a hostile work environment replete with negative comments about women. Quint claims to have complained to management at the plant of such harassment as early as 1992, but maintains that she received little if any response from the company. Quint alleges gender-related harassment such as her co-worker having made her carry heavier loads than others, deliberately timing her breaks at slow rather than busy periods, and generally making her work life difficult. Following Quint's formal complaint, her supervisor called a meeting with her,

the offending co-worker, and certain union representatives. The company notified the co-worker that his behavior was inappropriate and that he would be fired should such behavior continue.

Following her termination in March of 1994, Quint filed a grievance through her union alleging that she was fired without just cause and because of her work-related injury. The union argued to the company that although Quint's actions in canceling her appointments may have warranted some disciplinary measures on the part of Staley, termination was too harsh a sanction. The company denied the grievance, however, and the union did not pursue arbitration of the matter. Quint filed a charge of discrimination with the Maine Human Rights Commission (MHRC) on April 20, 1994. She alleged pursuant to the ADA that she had been discriminated against due to her physical disability. Staley subsequently received notice from the Equal Employment Opportunity Commission (EEOC) that Quint had filed an ADA claim against it. The ADA claim was filed with the EEOC effective May 9, 1994, when the MHRC waived its right to exclusively process the charge. Denying that Quint's carpal tunnel syndrome was a disability under the ADA, Staley filed a response with the EEOC.

The MHRC and the EEOC subsequently received unsworn letters from Quint on July 25, 1995, requesting an amendment to her initial charge to include as bases for the alleged discrimination sexual harassment and sexual discrimination. Staley received no notice of these new charges from the MHRC or the EEOC. Neither the MHRC nor the EEOC initiated any investigations into Quint's claims of sexual harassment or sexual discrimination. On March 8, 1996, Quint filed this action in federal court.

III. Discussion

Staley now moves for summary judgments on all counts of Quint's complaint. The company contends that because Quint failed to exhaust her administrative or collective bargaining agreement remedies, her Title VII and MHRA sexual harassment and sexual discrimination claims must be dismissed. Furthermore, Staley contends that Quint is not disabled for purposes of the ADA or the MHRA, and that, even if she is, the company made good faith efforts to accommodate her needs in the workplace. The company also avers that Quint's claims are barred by the applicable time limitations provided in Title VII, the ADA, and the MHRA. Finally, Staley contends that Quint's state common law tort claims must fail either because she did not oppose Staley's motion on these counts or because they are without merit. After carefully considering the merits of the parties' respective positions on the various issues, the Court grants Staley's motion as it relates to all counts of Quint's complaint except for portions of the two counts pertaining to disability discrimination.

A. Title VII and MHRA claims regarding sexual discrimination and harassment

Staley contends that it is entitled to judgments as a matter of law on Quint's sexual discrimination and sexual harassment claims, as well as on her retaliatory discharge claims advanced pursuant to Title VII and the MHRA, because such claims are beyond the scope of Quint's original administrative charge. The company also contends that by failing to exhaust her remedies under the applicable collective bargaining agreement entered into between the company and her union, all of Quint's claims, including her ADA and common law tort claims, must be dismissed. Finally, Staley contends that Quint's Title VII and MHRA claims may be dismissed on their merits.

Because the Court agrees with Staley's first contention on this point, it need not reach the issues raised by it concerning the collective bargaining agreement or the merits of the plaintiff's Title VII and MHRA claims. Quint's hostile environment harassment claim and her job status

discrimination claim based on sex are distinguishable, even though they are grouped together by Quint in Counts I and II of her complaint for purposes of Title VII and the MHRA. *Lattimore v. Polaroid Corp.*, 99 F.3d 456, 463 (1st Cir. 1996). Title VII requires an employee to file an administrative charge as a prerequisite to commencing a civil action for employment discrimination. *Id.* at 464; *see* 42 U.S.C. § 2000e-5(f). In order to provide the employer with prompt notice of the claim and to allow the opportunity for conciliation, "[t]he scope of the civil complaint is . . . limited by the charge filed with the EEOC and the investigation which can reasonably be expected to grow out of that charge." *Id.* (internal quotations and citations omitted). Although the Court construes the administrative charge liberally when, as here, the employee acts *pro se*, such status "does not relieve an employee of the obligation to meet procedural requirements established by law." *Id.* (citing *United States v. Michaud*, 925 F.2d 37, 41 (1st Cir. 1991)). A *pro se* complainant must describe the essential nature of the claim and must identify the core facts on which it rests. *Id.*

In the case at bar, Quint's administrative charge specifically describes her claim to be that she was discriminated against and eventually terminated from employment by Staley because of her *disability*. Although she attempted to amend her complaint some two months later by letter to add claims of job status discrimination based on sex, hostile environment sexual harassment, and retaliatory termination, Quint's efforts apparently were unsuccessful in the eyes of the EEOC, which failed to respond to or even investigate such claims. It is unclear whether the EEOC failed to respond to Quint's letter because it determined that it failed to satisfy the requirements for curing her original ADA charge, or because it found that the letter did not constitute the filing of a new charge pursuant to Title VII. The Court cannot be sure why the EEOC did not accept the letter as an amendment, but in view of the fact that no formal response ever was made to Quint and no notice

was made by the EEOC of such claims to Staley as required by 42 U.S.C. § 2000e-5(a) and by 29 C.F.R. § 1601.14(a), the Court cannot now examine such claims. The same is true for Quint's claims under the MHRA.² Because she has failed to establish that she filed charges of job status discrimination based on sex, hostile environment harassment, and retaliation with the MHRC as required by 5 M.R.S.A. § 4622(1) (Pamph. 1996), those claims are barred under state law. Thus, because Quint has failed to exhaust her EEOC remedies with respect to such claims, the Court directs that judgments as a matter of law be entered in Staley's favor on Counts I, II, III, and IV of the complaint.

B. ADA and MHRA claims regarding disability discrimination

Staley further contends that a summary judgment on Quint's claims in Counts V and VI regarding job status disability discrimination and a failure to provide reasonable accommodations under the ADA or the MHRA should be granted because Quint is not disabled for purposes of those laws and, even if she were, Staley made good faith efforts to accommodate her disability. Concluding that the circumstances surrounding Quint's diagnosed carpal tunnel syndrome raise genuine issues as to whether she is disabled under the ADA because she is substantially limited in the major life activities of lifting, performing manual tasks, and caring for herself, and as to whether Staley failed to reasonably accommodate Quint's disability, the Court denies Staley's motion for summary judgments with respect to Quint's claims that she was discharged due to her disability and that Staley failed to reasonably accommodate her disability. The Court grants, however, Staley's

² Because Maine courts have relied on the federal case law surrounding Title VII for purposes of construing the provisions of the Maine Human Rights Act, the same legal standards in considering whether the evidence was sufficient to support determinations under both the federal and state statutes are applied. *Morrison v. Carleton Woolen Mills, Inc.*, No. 96-1224, slip op. at 17 n.3 (1st Cir. Mar. 19, 1997) (citation omitted).

motion for a summary judgment based on Quint's claim that the company regarded her as being disabled.

"To obtain relief under the [] [ADA], a plaintiff must prove three things. First, that he was disabled within the meaning of the Act. Second, that with or without reasonable accommodation he was able to perform the essential functions of his job. And third, that the employer discharged him in whole or in part because of his disability." *Katz v. City Metal Co.*, 87 F.3d 26, 30 (1st Cir. 1996) (footnote omitted). A plaintiff also may indirectly prove that she was discriminated against because of a disability in violation of the ADA by using the *prima facie* case and burden-shifting methods first set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and later refined in such cases as *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981), and *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993). *Katz*, 87 F.3d at 30 n.2. Interpretation of the ADA and the MHRA proceed hand in hand. *Soileau v. Guilford of Maine, Inc.*, 105 F.3d 12, 14 (1st Cir. 1997). Under the ADA, an employer may not "discriminate against a qualified individual with a disability." 42 U.S.C. § 12112(a). In order to prevail on her claims in these two counts, Quint first must establish that she suffers from a "disability" within the meaning of the ADA. *Id.*

1. Whether a genuine issue exists as to whether Quint suffers from a physical impairment that substantially limits a major life activity.

The Court first addresses Quint's contention that she suffers from a physical impairment, carpal tunnel syndrome, that *substantially* limits major life activities such as lifting, performing manual tasks, caring for herself, and working. Pursuant to the ADA, an individual faces a "substantial limitation" when she is:

- (i) Unable to perform a major life activity that the average person in the general population can perform; or

(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

29 C.F.R. § 1630.2(j)(1). Factors to be considered under this analysis include the nature and severity of the impairment, the duration or expected duration of the impairment, and the permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment. *Id.* § 1630.2(j)(2). The ADA regulations make clear that temporary, minor injuries do not “substantially limit” a person’s major life activities. 29 C.F.R. §§ 1630.2(j), Pt. 1630 App., at 407. This does not mean, however, that an impairment must be permanent in order to rise to the level of a disability. “Some conditions may be long-term or potentially long-term, in that their duration is indefinite and unknowable or is expected to be at least several months. Such conditions, if severe, may constitute disabilities.” *Katz*, 87 F.3d at 31 (quoting 2 EEOC Compliance Manual, Interpretations (CCH) § 902.4, ¶ 6884, p. 5319 (1995)).

As an initial matter, the Court agrees with the plaintiff’s contention that lifting, performing manual tasks, caring for oneself, and working all are major life activities within the meaning of the regulations issued to implement the ADA. *See* 29 C.F.R. § 1630.2(i); 29 C.F.R. Pt. 1630 App., § 1630.2(i). The Court also agrees with Quint’s contention that genuine issues as to the nature and extent of Quint’s physical impairment exist for purposes of her claim that she is disabled with regard to lifting, performing manual tasks, and/or caring for herself. The evidence submitted by Quint concerning the symptoms surrounding her carpal tunnel syndrome and the limitations imposed on her activities by certain doctors cause the Court to conclude that she has generated genuine issues

for the fact finder's determination in deciding whether Quint actually is disabled and whether she was discharged by her employer due to such a disability.

The Court finds that Quint has presented sufficient evidence to raise factual issues as to whether she is substantially limited in at least three of these activities--lifting, performing manual tasks, and caring for herself--by her carpal tunnel syndrome as to constitute being disabled. At least one doctor has recommended a permanent lifting restriction of five pounds on an occasional basis for Quint. On the basis of this and other recommendations by doctors with respect to her physical limitations, a jury would be entitled to conclude that Quint was substantially limited in her abilities to lift, perform manual tasks, and care for herself compared with the average person in the population without such restrictions. *See Lowe v. Angelo's Italian Foods, Inc.*, 87 F.3d 1170, 1174 (10th Cir. 1996) (holding that lifting is a major life activity and that inability to lift more than 15 pounds creates genuine issue of material fact as to whether impairment substantially limits ability to lift). Quint's own testimony raises genuine issues regarding the limitations imposed by her disability on lifting, performing manual tasks, and caring for herself. Depending on which set of testimony, medical advice and reports a factfinder believes, one could conclude that Quint's symptoms either are temporary and minor, or are instead chronic and major. Thus, a reasonable fact finder could conclude that such limitations do significantly restrict Quint in the conduct, manner, and duration under which she can lift, perform manual tasks, and care for herself, as compared to the average person in the general population with respect to such life activities. 29 C.F.R. § 1630.2(j)(1)(ii). The Court is unpersuaded by Staley's claim that it should be granted a judgment as a matter of law on this claim because if Quint actually is unable to lift more than 5 pounds, she cannot perform the essential functions of her job with or without accommodation under the ADA. Sufficient factual issues have

been generated as to whether Quint can perform the essential functions of her job and, as is discussed *infra*, it is yet to be determined whether any reasonable accommodation by Staley would have enabled Quint to perform such functions. In light of the above conclusions, the Court does not decide the issue whether Quint has raised a genuine issue regarding her claim that she is substantially limited with respect to working.³

2. Whether a genuine issue exists as to whether Quint was regarded by her employer as having a disability

Quint also contends that she was regarded by Staley as having a disability, and therefore is entitled to relief under the ADA. An individual is “regarded as having a disability” if the individual has an impairment which is not substantially limiting but is perceived by the employer as substantially limiting. 29 C.F.R. § 1630.2(l).

In support of this claim, Quint avers that her supervisor at work placed her on leave because he regarded her as having too many restrictions and because he regarded her as having a *mental* impairment. Notwithstanding the fact that she does not assert a claim of being mentally impaired anywhere else in her suit, nor does she allege that such a perception had anything to do with her being terminated from work due to her *physical* impairment, carpal tunnel syndrome, Quint fails to present sufficient evidence that her employer regarded her as substantially limited in performing her

³ Because the Court concludes that a genuine issue exists for the fact finder's determination as to whether Quint is substantially limited with respect to the major life activities of lifting, performing manual tasks, and caring for herself, the Court does not reach the issue whether a genuine issue exists as to her being substantially limited with regard to working. "[I]f an individual is substantially limited in a major life activity other than working, or is so regarded, 'no determination should be made as to whether the individual is substantially limited in working.'" *Katz v. City Metal Co.*, 87 F.3d 26, 31 n.3 (1st Cir. 1996) (quoting 29 C.F.R. Pt. 1630, App., at 403); *see also Lowe v. Angelo's Italian Foods, Inc.*, 87 F.3d 1170, 1174 (10th Cir. 1996) (court need not reach issue whether plaintiff substantially limited in working if it finds a genuine issue of fact that she was substantially limited in lifting).

job or a wide range of jobs as a result of a perception that she was mentally impaired. *Soileau*, 928 F. Supp. at 51; *Wilmarth v. City of Santa Rosa*, 945 F. Supp. 1271, 1277 (N.D. Cal. 1996). In fact, during the examination of her former supervisor at a deposition, Quint elicited testimony from him confirming that both he and the company thought Quint *could* do her job.

Quint's evidence that Staley regarded her as disabled is scant and insufficient to raise a genuine issue of material fact. She has not generated any genuine issue of fact that her employer regarded her as mentally impaired, never mind as substantially limited in her ability to work. She at most has shown that Staley was aware that certain doctors had diagnosed her as having a form of carpal tunnel syndrome, and that she had missed work due to some of their recommendations. That her employer disputed the need for her to miss work or wished for her to attend other medical appointments does not indicate that Staley regarded her as disabled; on the contrary, it supports Staley's contention that it thought she still was able, with certain modifications, to perform her essential job functions. *Fink v. Kitzman*, 881 F. Supp. 1347, 1377 (N.D. Iowa 1995). Finally, contrary to her contention that the case of *Holihan v. Lucky Stores, Inc.*, 87 F.3d 362 (9th Cir. 1996), illustrates that a factual issue has been generated on this matter, the Court concludes that the case is sufficiently distinguishable from the one at bar as to be unavailing to Quint's position on this claim.

3. Whether a genuine issue exists as to whether Staley failed to reasonably accommodate Quint's needs in the workplace

The Court further finds that Quint has raised genuine factual issues regarding whether Staley failed to make good faith efforts to provide reasonable accommodations to her needs as required by 42 U.S.C. § 1981a(a)(3) such that a jury could reasonably find in her favor on this claim. Pursuant

to the ADA, prohibited discrimination includes the failure to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability." 42 U.S.C. § 12112(b)(5)(A). Although Staley came forward with evidence that it had arranged a modified, light-duty work arrangement for Quint, referred her to specialists, consulted with an ergonomic and a workplace expert, purchased new and expensive equipment on Quint's behalf, and that her condition improved markedly after such arrangements were instituted, Quint also has produced evidence to raise a genuine issue for the fact finder's determination on this issue. Quint states in her affidavit, for example, that following a May 1993 letter from one of her doctors restricting her work activities, Staley made no changes in her work conditions for over two months. She also states that she was required by Staley to exceed her doctor's restrictions on her work activities during this period, including being required to work overtime. Quint also states that she was instructed by Staley in October 1993 to resume her regular work duties, despite the fact that the recommendations made by the company's own ergonomist had not fully been implemented. The Court thus finds that Quint has generated genuine issues of fact with respect to her separate claims in Counts V and VI that her employer failed to reasonably accommodate her disability as required by the ADA and the MHRA.

In sum, Staley's motion for summary judgments is denied with regard to Quint's claims in Counts V and VI that she is disabled, that she was discharged due to her disability, and that Staley failed to make good faith efforts to accommodate her disability. A summary judgment is granted, however, in Staley's favor with respect to Quint's claim that the company regarded her as disabled.

C. Common law tort claims

Finally, in Counts VII through X of her complaint, Quint claims that she is entitled to damages under Maine law because Staley was negligent, because it both intentionally and negligently inflicted emotional distress on Quint, and because it defamed her. Staley has moved for summary judgments on these counts, and Quint has not opposed the motion with respect to these claims. In this District, a party's failure to timely respond to a motion generally is construed to waive objection to the motion. D. Me. R. 19(c). Federal Rule of Civil Procedure 56 requires, however, that the Court examine the merits of a motion for a summary judgment even though a nonmoving party fails to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991) (citations omitted). Accordingly, the Court will examine briefly the merits of Staley's motion, but will do so based on Staley's version of the statement of facts. *Id.*

Because the Court concludes that all of Quint's common law tort claims arise out of and in the course of her employment with Staley, and thus are subject to Maine's Workers' Compensation Act exclusivity and immunity provisions, the Court summarily treats the claims as a group. In Count VII of her complaint, Quint alleges negligence on the part of Staley based on the training and supervision of its employees with respect to preventing sexual discrimination and sexual harassment, and based on Staley's response to Quint's medical restriction and its training and supervision of the employees who oversaw Quint's employment. In Counts VIII and IX, Quint alleges intentional and negligent inflictions of emotional distress on the part of Staley. In Count X, Quint alleges that Staley either published or forced Quint to publish false statements defaming her business or professional performance during the course of her termination from employment.

Staley contends that it is entitled to a judgment as a matter of law on all of these counts because the claims are barred by the exclusivity and immunity provisions of Maine's Workers' Compensation Act, 39-A M.R.S.A. §§ 104, 408 (Supp. 1996).

The Act provides in pertinent part that:

[a]n employer who has secured the payment of compensation in conformity with sections 401 to 407 is exempt from civil actions, either at common law or under sections 901 to 908; Title 14, sections 8101 to 8118; and Title 18-A, section 2-804, involving personal injuries sustained by an employee arising out of and in the course of employment, . . .

39-A M.R.S.A. § 104. The Act further states that:

an employee of an employer who has secured the payment of compensation as provided . . . is deemed to have waived the employee's right of action at common law . . . to recover damages for the injuries sustained by the employee.

Id. at § 408. These two provisions are referred to as the exclusivity and immunity provisions of the Act. The Court accepts as fact Staley's claim that it has secured payment of workers' compensation benefits to Quint in accordance with Maine law.

The exclusivity and immunity provisions of the Act have been interpreted broadly by Maine's Law Court. *Reed v. Avian Farms, Inc.*, 941 F. Supp. 10, 14 (D. Me. 1996) (citing *Li v. CN Brown Co.*, 645 A.2d 606 (Me. 1994)). The Law Court has held that common law torts such as intentional and negligent inflictions of emotional distress arising from sexual harassment fall within the purview of the Act. *Knox v. Combined Ins. Co. of America*, 542 A.2d 363, 365 (Me. 1988). This Court itself has held that claims for libel and slander arising out of and in the course of employment are subject to the Act's provisions, as well. *Caldwell v. Federal Express Corp.*, 908 F. Supp. 29, 32-34 (D. Me. 1995). Common law actions for defamation also are subject to the Act's provisions. *Sylvester v. Wal-Mart Stores, Inc.*, No. CIV. 95-166-P-H, CIV. 95-167-P-H, 1995 WL 788206, at *3 (D. Me.

Dec. 21, 1995). The law thus is clear that in Maine, common law tort claims such as the ones advanced by Quint in the case at bar, so long as they arise out of and in the course of employment, fall within the exclusivity and immunity provisions of the Act. *Reed*, 941 F. Supp. at 14.

Here Quint's claims of negligence, intentional and negligent inflictions of emotional distress, and defamation, all involving discrimination based on sex or disability in the workplace, arise out of and in the course of her employment with Staley. The Court also is satisfied that, to the extent Quint attempts to make a claim for compelled self-publication as set forth in *Carey v. Mt. Desert Island Hosp.*, 910 F. Supp. 7 (D. Me. 1995), she has failed to produce sufficient evidence to support a claim that she was forced to repeat a defamatory statement. There thus is no "substantial evidence of such compulsion" to generate a genuine issue for the fact finder on this claim. *Id.* at 13 n.7 (internal quotation and citation omitted). Summary judgments in Staley's favor thus are granted on Counts VII through X of Quint's complaint.

IV. CONCLUSION

Accordingly, for the above-stated reasons, it is hereby **ORDERED** that the defendant's motion for summary judgments on Counts I, II, III, IV, VII, VIII, IX, and X is **GRANTED**, but is **DENIED** as to Counts V and VI with respect to the issues whether the plaintiff was disabled and was terminated from her employment due to her disability, and whether the defendant failed to reasonably accommodate the plaintiff's disability pursuant to the ADA and the MHRA.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated this 23d day of April, 1997.